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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 DARREL C. OLDS, JR.,

12 Petitioner,

13 v.

14 WASHINGTON STATE DEPARTMENT OF  
CORRECTIONS,

15 Respondent.  
16

Case No. C08-5612 FDB/KLS

ORDER TO AMEND PETITION

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18 This habeas corpus petition has been referred to United States Magistrate Judge Karen L.  
19 Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Petitioner seeks federal  
20 habeas corpus relief pursuant to 28 U.S.C. § 2254. (Dkt. # 1).

21 The Court notes that Petitioner has failed to name the correct Respondent, thereby depriving  
22 this Court of personal jurisdiction. *United States v. Giddings*, 740 F.2d 770, 772 (9<sup>th</sup> Cir. 1984).  
23 28 U.S.C. § 2243 requires that writs are to be directed “to the person having custody of the person  
24 detained.” The proper respondent in a federal habeas corpus petition is the petitioner’s “immediate  
25 custodian.” *Demjanjuk v. Meese*, 784 F.2d 1114, 1115 (D.C.Cir. 1986). A custodian “is the person  
26 having a day-to-day control over the prisoner. That person is the only one who can produce ‘the  
27 body’ of the petitioner.” *Guerra v. Meese*, 786 F.2d 414, 416 (D.C.Cir. 1986).

28 ORDER - 1

1 Therefore, Petitioner's custodian for purposes of his habeas corpus petition challenging the  
2 execution of his Washington state sentence, is the warden of the prison where he is currently  
3 confined. *See, e.g., Brittingham v. United States*, 982 F.2d 378 (9<sup>th</sup> Cir. 1992); *Dunne v. Henman*,  
4 875 F.2d 244, 249 (9<sup>th</sup> Cir. 1989).

5 In addition, Petitioner has filed a "Petition for Writ of Habeas Corpus Per RCW 7.36," using  
6 a form of the Superior Court of the State of Washington for Thurston County. Dkt. # 8. Pursuant to  
7 Rule 2 of the Rules Governing Section 2254 Cases, a petition for habeas corpus must substantially  
8 follow the form prescribed by this Court. The petition must specify all the grounds for relief  
9 available to petitioner, state the facts supporting each ground, state the relief requested, be printed  
10 typewritten or legibly handwritten and be signed under penalty of perjury.

11 Accordingly, it is **ORDERED**:

12 (1) Petitioner shall amend his petition to name his immediate custodian and warden as  
13 Respondent **on or before January 30, 2009**. Petitioner shall use the form prescribed by this Court.  
14 To assist him, the Clerk of the Court is directed to mail Petitioner a 28 U.S.C. § 2254 Petition form;

15 (2) Petitioner's motion for extension of time to file service copies of petition (Dkt. # 3)  
16 is **DENIED** as moot. Petitioner is reminded that at the time he files his amended petition, he should  
17 submit one service copy of the petition; and

18 (3) The Court Clerk is directed to send a copy of this Order to Petitioner and to note this  
19 matter for the Court's **January 30, 2009** calendar.

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21 DATED this 16th day of December, 2008.

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25 Karen L. Strombom  
26 United States Magistrate Judge  
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